IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO.966 OF 1989

M/s.T.T.Blades & Anr. .. Petitioners
V/s
Union of India & Ors. .. Respondents

Mr.Bulchandani i/by Mr.K.S.Kumar for the Petitioners.

Mr.A.J.Rana with Mr.H.V.Mehta & Mr.S.M.Shah for the Respondents.

CORAM: S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 09.03.2005.

P.C.:

1. Heard the learned Counsel for the parties. In this petition, pursuant to the order passed in Appeal by the Commissioner of Excise dated 22nd June, 1984 it was held that the Petitioners were entitled to refund of Rs.1,10,382/- for the period April, 1978 to December 1978. Similarly, in another Appeal, by an order dated 26th June, 1984 it was held that the Petitioners were entitled to refund of Rs.1,49,432/- for the period from January, 1979 to November, 1979.

2. The Petitioner herein had filed a Writ Petition No.2388 of 1984 wherein this Court, by an order dated 19th December, 1984 had directed the Respondents to deposit the entire amount of Rs.2,59,814/- (Rs.1,10,382/- plus Rs.1,49,432/-). During the pendency of the above Writ Petition No.2388 of 1984, the Department seems to have filed an Appeal with regard to the order dated 22nd June, 1984, however, no Appeal was

filed by the Department with regard to the order dated 26th June, 1984. Finally the Tribunal, by its order dated 11th March, 1988 remanded back the matter to the Commissioner (Appeals) to pass the fresh orders. It appears that the Commissioner (Appeals) after the said remand, by his order dated 17th January, 1989 rejected the Appeal preferred by the Petitioners. As a result, the Petitioners were not entitled to refund of the said amount. When the Writ Petition No.2388 of 1984 came up for final hearing, this Court by an order dated 11th March, 1994 directed the Petitioners in view of the order dated 17th January, 1989 passed by the Commissioner (Appeals), to return the sum of Rs.2,59,814/- to the Respondents with interest. Accordingly, the Petitioners on 18th April, 1994 paid to the Respondents a sum of Rs.4,23,496.82 which includes the interest of Rs.1,63,682.82.

3. In the meantime, the Petitioners had also filed a Writ Petition No.966 of 1989 challenging the aforesaid order dated 17th January, 1989 passed by the Commissioner (Appeals) rejecting the Petitioners Appeal. Today this Petition is taken up for final hearing.

4. Mr.Rana, the learned Counsel on behalf of the Respondents very fairly stated that now the main issue in the above petition is squarely covered by the judgment of the Apex Court in the case of **Prestige Engineering (India) Limited V/s.Collector of Central Excise - 1994(4) RLT 333 (S.C.).**

5. In view of the above, the order of the Commissioner (Appeals) dated 17th January, 1989 is set aside. As a result the Petitioners would be entitled to refund of Rs.1,10,382/-. In view of our allowing the amendment in the Petition, the Petitioner is also entitled to refund of Rs.1,49,432/- as per the order of the Collector (Appeals) dated 26th June, 1984. It may be noted here that the said order of Collector (Appeals) dated 26th June, 1984 was not challenged by the Department.

6. It appears that the Petitioner was allowed to withdraw Rs.2,59,814/- by an order dated 19th December, 1984. However, in view of the order passed by the Commissioner (Appeals) on 17th January, 1989 rejecting the Appeal of the Petitioners on remand, this Court by an order dated 11th March, 1994 had directed the said amount of Rs.2,59,814/- with interest to be returned back to the Respondents, which accordingly the Petitioner had done by paying Rs.4,23,496.82 which is inclusive of interest of Rs.1,63,682.82. It may be noted here that the Petitioner though had paid the interest to the Respondents on 18th April, 1994 in the sum of Rs.1,63,682.82 the petitioner had not filed any application for amendment till date. The Petitioner has approached this Court after a lapse of almost 11 years. Under these circumstances, the Petitioner will not be entitled to any interest on the said sum of Rs.1,63,682.82.

7. In view of the amended provisions of the Central Excise Act, the Petitioners should make an appropriate application with regard to the refund of Rs.1,10,382 and a further sum of Rs.1,49,432/- to the concerned authorities to establish that the Petitioners have not passed on the duty to the Customers. Accordingly, the Petitioners shall make such an application within a period of four weeks from today. If such an application is made by the petitioners within a period of four weeks from today, the Respondents shall decide the same within a period of four weeks thereafter.

8. The Respondents are directed to refund to the Petitioners the aforesaid interest amount of Rs.1,63,682/- (which was paid by the Petitioners in April, 1994), within a period of six weeks from today, failing which, the Respondents shall pay the interest at the rate of 12% per annum on the said sum of Rs.1,63,682/- till realisation.

9. Writ Petition stands disposed of in the above terms.

10. Issuance of certified copy is expedited.

(S.RADHAKRISHNAN,J.)

(J.P.DEVADHAR,J.)